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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/786,252	08/13/2001	Gerard Wolfe Sormann	64194-9004	8084

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EXAMINER

BOCKELMAN, MARK

ART UNIT PAPER NUMBER

3762

DATE MAILED: 10/03/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/786,252

Applicant(s)

SORMANN ET AL.

Examiner

Mark W Bockelman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-34 is/are pending in the application.
- 4a) Of the above claim(s) 14-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-11 and 26-32 is/are rejected.
- 7) ☒ Claim(s) 33 and 34 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4-5, 7-13, 26-31 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cimochowski et al USPN 5,967,986 (alone or alternatively in view of Forsell USPN 6,210,347).

Cimochowski teaches a primary controller (101-fig12, 90-90" figs 7-10) an antenna based stent device 30 – 30" that receives power and transducer selection data from the primary controller to select various transducers to monitor various characteristics such as flow and transmit the results back to the primary controller (thus possessing a receiver) and monitoring console 101. Cimochowski states that for deep implants up to

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100 MHz carrier frequencies may be used and for shallow implants much higher frequencies are used. Cimochoski suggests that up to 1 Ghz may be used with no anticipated problems (see column 12 lines 23-45). In the event applicant does not consider such to anticipate a 1 Ghz carrier, the examiner cites Forsell USPN 6,210,347 as showing that the use of GHz carrier frequencies for the transmission of power and or data in the Cimochoski scheme would have been within the level of skill in the art. Cimochoski used saddle and helical loops for the antennas.

In regard to claim 8, the examiner considers the turning on an off of the transducers via the MUX switch as called for by the controller to be the result of the generation of pulses of current by the antenna based device. The Doppler embodiment requires pulsed transducer excitation as well.

Although it is not clear as to what applicant means by spring-based stent, the Cimochowski et al device is made of conventional stent materials which may be expanded and would have some degree of compressability/resiliency. In the event that applicant considers the stent to act as a spring, the examiner takes official notice that many such stents are old and well known and that a reading of Cimochowski would convey to the reader that any of these types of stents may be used.

Figure 8 Column 13 lines 49+ teach an embodiment using and intermediate set of coils (repeater device) as called for in applicant's claim 31.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cimochowski et al. USPN 5,967,986 alone or in view of Forsell 6,210,347 as applied to

claims 1-11 and 26-31 and further in view of Mehra USPN 5,170,802. To have used the stent device of Cimochoowski et al for pacing and thus stimulating muscle as recited in applicant's claim 32 would have been obvious in view of Mehra USPN 5,170,802 which teaches the use of stents for pacing.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over in view of Ponnappalli et al. USPN 5,583,510 To have substitute the antenna of Cimochoski with a conventional planar omnidirectional as taught by Ponnappalli one would have been obvious to one of ordinary skill in the art.

Allowable Subject Matter

Claims 33-34 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark W Bockelman whose telephone number is (703)-308-2112. The examiner can normally be reached on Monday - Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-0858.

MWB

September 23, 2003


MARK BOCKELMAN
PRIMARY EXAMINER